

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

BKY. NO. 03-51348

PERRY W. ALLEN AND JANE A. ALLEN,

DEBTOR(S).

CHAPTER 7

JAY C. HUEPER,

ADV. NO. 04-5003

PLAINTIFF(S),

**MOTION TO EXTEND
DISCOVERY AND
DISPOSITIVE DEADLINES**

V.

PERRY W. ALLEN, INDIVIDUALLY,
AND D/B/A ALLEN CONSTRUCTION,

DEFENDANT(S).

TO: Richard A. Ohlsen, Attorney at Law, 417 Laurel Street, P.O. Box 366, Brainerd, MN 56401-0366.

1. Plaintiff, Jay C. Hueper, by and through his attorney, Stephen J. Behm, moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion at 1:30 p.m. on Wednesday, October 6, 2004 at 416 U.S. Courthouse, 515 West First Street, Duluth, MN 55802.
3. Any response to this motion must be filed and delivered not later than Sunday, October 3, 2004 which is three (3) days prior to the time set for hearing or served and filed by mail not later than Wednesday, September 29, 2004 which is seven (7) days before the time set for hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The genesis of this adversary proceeding is a Chapter 7 case that was commenced on October 17, 2003. The First Meeting of Creditors was held on November 26, 2003. The above-captioned adversary proceeding was commenced on January 20, 2004 and is now pending in this Court.
5. This motion arises under 11 U.S.C. § 105, Bankruptcy Rules 7016 and 7026 and Local Rules 7016-1 and 7026-1. This motion is filed under Bankruptcy Rules 7007 and 9014 and Local Rules 7007-1, 9006-1, 9013-1, 9013-2 and 9017-1.

6. The Court issued a Scheduling Order on this adversary proceeding on May 27, 2004. Plaintiff asserts that an extension in the dispositive motion and discovery deadlines is both necessary and warranted and contends that there is good cause for the Court to extend such deadlines because there have been difficulties compiling all of the documentation relating to the allegations in the Plaintiff's Complaint and the defenses in the Defendant's Answer. Some records and other documentation will have to not only be requested from banks and businesses in and around the Defendant's county of residence but also Plaintiff's counsel will have to conduct a record and document search at the Aitkin County Recorder's Office and the Aitkin County Tax Assessor's Office. There has also been difficulty in obtaining the Plaintiff's own supporting documentation and more time will be necessary for the Plaintiff to search his own bank records and consult with various other parties who were associated with the construction of Plaintiff's home for the appropriate records.
7. Plaintiff's counsel has spoken with counsel for the Defendant and both counsel agree that the deadlines in the Court's prior Scheduling Order of May 27, 2004 should be extended out 90 days if the Court is so amenable.

WHEREFORE, Plaintiff respectfully requests that the Court issue an Order as follows:

- A. Extending the discovery and dispositive deadline terms of its Scheduling Order dated May 27, 2004 ninety (90) days and further request that the Court enter an Order in the form attached hereto as Exhibit A.
- B. For such other and further relief as the Court deems equitable in the premises.

Said Motion is based upon all of the documents on record, the attached Affidavit of Counsel and the attached Memorandum of Law.

Dated: this 17TH day of September, 2004.

ESKENS, GIBSON & BEHM LAW FIRM, CHTD.

/s/ Stephen J. Behm
Stephen J. Behm, #0263758
Attorney for Plaintiff
115 East Hickory Street, Suite 200
P.O. Box 1056
Mankato, MN 56002-1056
Telephone: (507) 345-5500

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

BKY. NO. 03-51348

PERRY W. ALLEN AND JANE A. ALLEN,

DEBTOR(S).

CHAPTER 7

JAY C. HUEPER,

ADV. NO. 04-5003

PLAINTIFF(S),

MEMORANDUM OF LAW

V.

PERRY W. ALLEN, INDIVIDUALLY,
AND D/B/A ALLEN CONSTRUCTION,

DEFENDANT(S).

I.

INTRODUCTION AND FACTUAL BACKGROUND

Pursuant to Local Rules 7007-1 and 9013-2, Jay C. Hueper, the Plaintiff herein, submits this Memorandum of Law in support of his Motion to Extend Discovery and Dispositive Deadlines. The Debtor/Defendant filed a Chapter 7 bankruptcy petition on October 17, 2003 and the 11 U.S.C. § 341 First Meeting of Creditors was duly conducted on November 26, 2003. The Court entered a Discharge Order on January 27, 2004. Plaintiff interposed a Complaint to Determine Dischargeability of Debt on or about January 21, 2004. The Debtor/Defendant duly interposed an Answer to said Complaint on or about February 20, 2004.

Plaintiff asserts that an extension in the dispositive motion and discovery deadlines is both necessary and warranted and contends that there is good cause for the Court to extend such deadlines because there have been difficulties compiling all of the documentation relating to the allegations in the Plaintiff's Complaint and the defenses in the Defendant's Answer. Some

records and other documentation will have to not only be requested from banks and businesses in and around the Defendant's county of residence but also Plaintiff's counsel will have to conduct a record and document search at the Aitkin County Recorder's Office and the Aitkin County Tax Assessor's Office. There has also been difficulty in obtaining the Plaintiff's own supporting documentation and more time will be necessary for the Plaintiff to search his own bank records and consult with various other parties who were associated with the construction of Plaintiff's home for the appropriate records. Plaintiff's counsel has spoken with counsel for the Defendant and both counsel agree that the deadlines in the Court's prior Scheduling Order of May 27, 2004 should be extended out 90 days if the Court is so amenable.

II.

ISSUE

Should the Court grant the Plaintiff's Motion to Extend Discovery and Dispositive Deadlines?

III.

DISCUSSION

Rule 16(b) of the Federal Rules of Civil Procedure, made applicable to bankruptcy matters by Bankruptcy Rule 7016, provides for the entry of a scheduling order that limits the time to complete discovery and provides that the schedule shall not be modified except by leave of the Judge and upon a showing of good cause." In the Matter of INTERCO, INC., 139 B.R. 224 (Bankr.E.D.Mo. 1992). The time table established by the Court is binding upon the parties and a Court may modify the Order upon a showing of good cause. Goewey v. United States, 106 F.3d 390 (4th Cir. 1997). *See also* SIL-FLO, Inc. v. SFHC, Inc., 917 F.2d 1507 (10th Cir. 1990).

In the present case, an extension in the dispositive motion and discovery deadlines is

both necessary and warranted and there is good cause for the Court to extend such deadlines because there have been difficulties compiling all of the documentation relating to the allegations in the Plaintiff's Complaint and the defenses in the Defendant's Answer. Some records and other documentation will have to not only be requested from banks and businesses in and around the Defendant's county of residence but also Plaintiff's counsel will have to conduct a record and document search at the Aitkin County Recorder's Office and the Aitkin County Tax Assessor's Office. There has also been difficulty in obtaining the Plaintiff's own supporting documentation and more time will be necessary for the Plaintiff to search his own bank records and consult with various other parties who were associated with the construction of Plaintiff's home for the appropriate records. Plaintiff's counsel has spoken with counsel for the Defendant and both counsel agree that the deadlines in the Court's prior Scheduling Order of May 27, 2004 should be extended out 90 days if the Court is so amenable. For these reasons, good cause exists for the Court to continue the trial date on the adversary proceeding and to extend the dispositive and discovery time periods.

IV.

CONCLUSION

Based upon the foregoing, the Plaintiff respectfully requests the Court to extend the discovery and dispositive deadlines on the above-captioned adversary proceeding.

Dated: this 17TH day of September, 2004.

ESKENS, GIBSON & BEHM LAW FIRM, CHTD.

/s/ Stephen J. Behm

Stephen J. Behm, #0263758

Attorney for Plaintiff

115 East Hickory Street, Suite 200

P.O. Box 1056

Mankato, MN 56002-1056

Telephone: (507) 345-5500

Exhibit "A"

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Perry Allen and
Jane Allen,

Debtor.

**AMENDED
SCHEDULING ORDER**

Jay Hueper,

Plaintiff,

vs.

BKY 03-51348
ADV 04-5003

Perry Allen, individually and
d/b/a Allen Construction,

Defendant.

A hearing on the above-captioned adversary proceeding was held before the undersigned on October 6, 2004, upon Plaintiff's Motion to Extend Discovery and Dispositive Deadlines. Appearances were noted on the record. Based upon all of the documents, memoranda and records available to this Court,

IT IS HEREBY ORDERED:

1. **Inapplicability of Disclosure Requirements.** The provisions of FED. R. CIV. P. 26(a)(1), 26(f), 26(a)(2), and 26(a)(3) shall not apply in this adversary proceeding.
2. **Discovery.** On or before *November 30, 2004*, counsel for each party shall *complete* all discovery proceedings authorized by FED. R. CIV. P. 26 through 37. In relation to discovery:
 - a. Initial discovery requests shall be served *promptly* after the entry of this order, if they have not been made to date. All discovery requests and notices shall be served enough in advance of the deadline to permit a full period for answer, absent consent of the answering party or deponent.
 - b. Motions to compel discovery may be made only after full compliance with LOC. R. BANKR. P. (D.MINN.) 7037. All such motions shall be served and filed no later than fifteen (15) days before the deadline for completion of discovery. If necessary, such motions shall be coupled with a motion for an extension of that deadline and any related deadlines.

- c. Counsel shall not file written discovery requests or responses until such time as the Court may have to consider them for substantive or impeachment purposes in connection with a pending motion or at trial.
3. **Pretrial Jurisdictional Motions.** All motions for abstention, remand, determination of the right to jury trial, transfer to U.S. District Court, or other relief related to this Court's jurisdiction and authority to hear and finally determine this adversary proceeding shall be served and filed within thirty-five (35) days of the date of this Scheduling Order.
4. **Dispositive Motions.** By **December 17, 2004**, counsel shall serve and file all dispositive motions. All responsive and reply papers shall be served and filed in compliance with Loc. R. Bankr. P. (D.Minn.) 9006-1 (b)-(c).
5. Unless altered by further order, all deadlines are mandatory. The Court will entertain one stipulation of extension of deadline(s), upon a recitation of circumstances constituting good cause, as long as the stipulation is filed before the deadline in question. All other extensions will be considered only on formal motion. *If any party is not represented by an attorney, he or she shall comply with all requirements directed to "counsel" in this order.* If appropriate, the Court will set a second scheduling conference or pre-trial conference. **FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN IMPOSITION OF SANCTIONS UPON COUNSEL OR PARTY, PURSUANT TO Fed. R. Civ. P. 16 (f), as incorporated by Fed. R. Civ. P. 7056.**

BY THE COURT:

Dated: _____

GREGORY F. KISHEL
CHIEF UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Perry Allen and
Jane Allen,

Debtor.

**AMENDED
SCHEDULING ORDER**

Jay Hueper,

Plaintiff,

vs.

BKY 03-51348
ADV 04-5003

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BY THE COURT:

Dated: _____

GREGORY F. KISHEL
CHIEF UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

IN RE:

BKY. NO. 03-51348

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CHAPTER 7

JAY C. HUEPER,

ADV. NO. 04-5003

PLAINTIFF(S),

**AFFIDAVIT OF SERVICE
BY MAIL**

V.

PERRY W. ALLEN, INDIVIDUALLY,
AND D/B/A ALLEN CONSTRUCTION,


DEFENDANT(S).

STATE OF MINNESOTA)
)ss.
COUNTY OF BLUE EARTH)

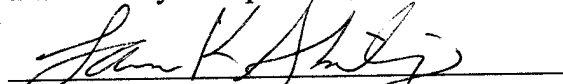
Stephen J. Behm, Attorney with **Eskens, Gibson & Behm Law Firm Chtd.**, 115 East Hickory Street, Suite 200, P.O. Box 1056, Mankato, MN 56002-1056, being first duly sworn, deposes and says that on September 17, 2004 he served the attached **NOTICE OF HEARING AND MOTION TO EXTEND DISCOVERY AND DISPOSITIVE DEADLINES, MEMORANDUM OF LAW, EXHIBIT "A," AND PROPOSED ORDER** upon the following individual(s):

Richard A. Ohlsen, Attorney at Law, 417 Laurel Street, P.O. Box 366, Brainerd, MN 56401-0366.

by sending true and correct copies thereof via United States Mail, postage prepaid, and addressed to the attention of said individuals.


Stephen J. Behm

Subscribed to and sworn before me
this 17TH day of September, 2004.


Notary Public

